1949 File No. O. Local Boards 49

Legal Department

A BRANCH

Subject:— Opinions under the Bombay Local Boards Act 1923

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File No. U. Local Boards/49

Gen. 194

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C O N T E N T S.

Legal Department File No. 0. Local Boards/49

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K.V.V.
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L.D.R.I.No.305, dated 7.1.49.

Submitted,

Please see the letter from the Examiner Local Fund Accounts at page 1 ante. It appears that the District Local Board Panch Mahal has built mk a statue of Hon'ble Sardar Vallabhai Patel at Godhra at a cost of Rs.75,000/- and that it was to be unveiled by Hon'ble Pandit Jawaharl Nehru in the beginning of the December. H. &. L.G.D. is o the opinion that in view of the R.LA's opinion No.7769, dt. 14.8.1948 it would not be permissible for the Board incure the expenditure of the erection of the statue. Th R.L.A. has been requested to advise whether that view is correct.

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Office of the R.L.A.

Seen and returned. The view expressed by the Madras Health and Local Government Department is correct.

Sd/- P.K.Lad,
15/1.

Remembrancer of Legal Affairs.

U.R. to H. & L.G.D. No.564, dated the 17th Jan 1949

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M.V.V.
5/6.

Office of the R.L.A.

Prosecution for false T.A.bills.

Criminal Procedure Code, 1898. Sec.——197; and Bombay Local Boards Act, 1923. Sec. 136(2).

R.L.A.'s opinion No.9333, dated 19.9.1947.

The proposed prosecution has to be considered in relation not only to section 197 of the Code of Criminal Procedure but section 136(2) of the Bombay Local Boards Act 1923. The former section uses the words "any offence alleged to have been committed while acting or purporting to act in the discharge of his official duty"; while the latter uses similar words, namely, "anything done or purporting to have been done in pursuance of this Act or any other law for the time being in force which entitles or requires a Local Board/ members, officer, servant as such or other person so acting to exercise any powers or perform any duties." In Emperor v. Naik,41 Bom.L.R.p.1227, it was held by Sir John Beaumont that a prosecution against an Administrative Officer of a local Board for an offence punishable under section 40 of the Indian Penal Code for submitting a false travelling allowance bill to the Board can lie in the absence of a notice given under section 136 of the Bombay Local Boards Act, 1923 inasmuch as it was impossible to say that an officer of the Board delivering a false bill deliberatel was acting or purporting to act in pursuance of the Act and that the delivery of his travelling allowance bill was not a duty imposed upon him by the Act. This decision was considered and distinguished in Emperor v. Vishnu Tatyaba Nail 42 Bom.L.R. 1193, which was decided on its own special fact It is upon similar special facts that R.L.A's opinion No. 9333, dated the 19th September 1947 was given. The case of submission of a false travelling allowance bill would b governed by the decision in Emperor v. Naik, 41 Bom.L.R.12 and the principle of that decision has been recently endorsed by the Privy Council in two cases, Gill v. The King, 50 Bom.L.R. 467, and Meads v. The Kings, 50 Bom. L.R.664. The principle has been laid down by the Privy Council i the following passage:-

"A public servant can only be said to act or purpor

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> to act in the discharge of his official duty if his act is such as to lie within the scope of his official duty..... The test may well be whether the public servant, if challenged, can reasonably claim that what he does, he does in virtue of his office."

Applying this test it would be difficult for the President of the District Local Board in this case to claim that the presentation of a false travelling allowance bill was done in virtue of his office. In my opinion, therefore, no sanction would be necessary under section 197 of the Criminal Procedure Code, nor would the protection of section 136(2) of the Bombay Local Boards Act, 1923, be available to the President.

Sd/- P.M.Lad,
17/1.

Remembrancer of Legal Affairs.

U.R. to H. & L.G.D. No.43-Confl. dated the 17th January 1949.

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M.V.V.
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Office of the R.L.A.

Bombay (Enlargement of Area and Alteration of Boundaries Act, 1948.

Bombay Local Boards Act, 1923, SEC. 3-A(1)

Bombay Land Revenue Code, Sec.7.

Jurisdiction of District Local Board over merged area.

It appears that by Government Notification P. & S.D. No.2751/46-F, dated 15th June 1948 issued under the Bombay (Enlargement of Area and Alteration of Boundaries) Act, 1948, the Governor of Bombay inter alia directed that "the Pandu Mewas Thana and the Talukas of Umeta Chhaliar and Sahora shall merge with and form part of the Kaira District and shall be administered accordingly." The question raised for the consideration is whether this area has already merged in the Kaira district so that the District Local Board thereof could have jurisdiction over this area, or whether a fresh notification under section 7 of the Bombay Land Revenue Code including this area in the district of Kaira is necessary for the purpose.

By virtue of the Bombay (Enlargement of Area and Alteration of Boundaries) Order, 1948, issued by the Govefnor - General under section 290 of the Government of India Act, 1935, the Governor of Bombay by a notification No.2751/46-F, dated the 15th June 1948 directed that this area should be included in the district of Kaira. The term "district" has not been defined either in the Government of India Act or in the General Clauses Act. Ordinarily, therefore, that term will have to be given the meaning which is assigned to it under the Act which is applicable in respect of the revenue administration, that is to say, the Bombay Land Revenue Code. If so, a fresh notification under section 7 of the Bombay Land Revenue Code would not be necessary. However, a draft notification is already published by

Government in the issue of Bombay Government Gazette dated the 13th January 1949 including this area in the Kaira district. Consequently, it would be safer to issue a final notification under section 7 of the Bombay Land Revenue Code including this area in the Kaira District so that by virtue of section 3-A (1) of the Bombay Local Boards Act, 1923, this area might be deemed to be part of the Kaira District and the District Local Board thereof might have jurisdi - ction over it. On the issue of such final notifi - cation no further notification under the Bombay Local Boards Act would be necessary. The view taken by the Health and Local Government Department is correct.

Sd/- P.M.Lad, /23.2

Remembrancer of Legal Affairs.

U.R. to H. & L.G.D.No.2291, dated the 24th February 1949.

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Office of the R.L.A.

Bombay Local Boards Act, 1923: s.48(a).

Payment of Travelling Allowance to Chief Officer and Engineer of the District Local Board, Ratnagiri.

It appears that Rao Saheb S.S. Rajadhyakasha, Chief Officer and Engineer of the District Local Board, Ratnagiri, attended the Darbar at Bombay for investiture of the title of Rao Saheb. He is claiming travelling allowance for attending the Darbar under Note 3 to Rule 563 of the Bombay Civil Services Rules. The Commissioner, Southern Division, is of the opinion that, as the Board has not adopted the Bombay Civil Services Rules, the journey cannot be said to have been undertaken in the interest of the Board and he is therefore doubtful whether travelling allowance can be debited to the Local Fund of the Board. Finance Department considers that the Bombay Civil Services Rules so far as they relate to compensatoty allowance, including travelling allowance, can be treated as fundamental rules for the purposes of Rule 23 of the Rules under section 33(h) of the Bombay Local Boards Act. The Examiner, Local Fund Accounts, considers that sections 50 and 76(2) contemplate expenditure of funds of the Local Board upon the specified duties of the Board and consequently, unless the journey of Rao Saheb Rajadhyaksha to attend the Darbar at Bombay is considered for the purposes of the Bombay Local Boards Act, the expenditure may not be strictly lawful. The R.L.A. is requested to advise.

By virtue of rule 23 of the Rules framed by Government under section/33 (h) of the Bombay Local Boards Act, the Fundamental Rules and the Supplementary Rules framed by Government in so far as the are not inconsistent with the rules framed by the Local Board under section 123 of the Act shall be applicable to all employees of the District Local Board. Under rule 563 of the Bombay Civil Ser

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Rules and Note 3 thereunder, a Government servant attending an investiture for receiving decorations and medals shall be entitled to the travelling allowance. There is nothing in the rules framed by the District Local Board, Ratnagiti, which is inconsistent with this provision. Consequently, R.S. Rajadhyaksha will be entitled to the travelling allowance under rule ₹ 563 of the Bombay Civil Services Rules which will be applicable to him. The objection raised by the Examiner, Local Fund Accounts, is based on sections 50 and 76 of the Bombay Local Boards Act but he seems to have overlooked section 78(a) which provides for ~~xxxx~~ payment of salaries and other emoluments of all officers and servants. The expression "emoluments" covers the travelling allowance. Consequently, section 78(a) is the relevant provision and not section-s 50 and 76. R.S. Rajadhyaksha would, therefore, be entitled to the travelling allowance for attending the investiture.

Sd/- P.M.Lad,
24/2.

Remembrancer of Legal Affairs.

U.R. to H. & L.G.D. No.2295 , dated the 26th February, 1949.

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R.I.No.3696, dated 11/3/1949.

Under Sect.6 read with sect. 133(a) of the Bom. Local Boards Act, 1923, Govt. prescribed the constitution of the District Local Board, Sholapur. (Vide G.R.G.D.No.4374/33 dt.14.3.46) in pursuance of which it consists of 45 elected members with a separate electorate for the Muslims, The normal triennial period of the D.L.B. Sholapur, is due to expire on 13.7.49. The Collr. of Sholapur states that so far none of the merged state areas have been given in charge of the D.L.B., Sholapur for the purpose local board, administration, and if the elections are held with ~~hmmm~~ the votes from the existing local board area, the subjects of the merged states will have no representation on the Board. He, therefore, suggested that it would be better if the present term of office of the members of the D.L.B., Sholapur, is extended beyond 13.7.49. The Commr. C.D. also supports this ~~mmmm~~ proposal.

The question for R.L.A's consideration is whether if the term of office of the present Board is once extended by two years under sect. 28 of the Bom. Local Boards Act, 1923, whether the period could be subsequently curtailed.

A.Cs.
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Office of the R.L.A.

Attention of the Health and Local Government Department is invited to the Advocate General's opinion No.4, dated the 22nd March 1949, accompanying R.L.A's No.196-Confl. dated the 23rd March 1949.

Sd/- P.M.Lad,
23/3/49

Remembrancer of Legal Affairs.

U.R. to H. & L.G.D. No.3156, dated the 23rd March 1949.

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Office of the R.L.A.

The Collector of Surat reports as follows:

"The name of Mr. Gunvatrai Manibhai Desai appears as a voter in the current Bombay Legislative Assembly Voters' List. Normally his name should have been entered by the village Officers in the District Local Board Voters' List, if he had got the requisite residential qualifications which I understand he has. He, however, did apply for insertion of his name in the District Local Board Voters' List within the prescribed period of one month and I therefore rejected his request for the entry of his name. If, however, Government considers that I can enter his name ~~notwithstanding~~ ~~sub-rule~~ or his belated/of general interest for action in / such obvious cases and I would solicit early orders on the point."

/ request I will do so. This is a point...

The Health and Local Government Department observes that it does not seem from the provisions of section 13 or 14 that the Collector cannot entertain any application after one month after the publication of the list and that, therefore, the Collector can enter the name of Mr. Desai. The R.L.A. is requested to advise whether this view is correct.

2. The preparation, publication, revision and final publication of the voters' list are governed by the provisions of sections 11 to 14 of the Bombay Local Boards Act, 1923 and by Rules 3 and 4 of the Bombay Local Boards Election Rules, 1932. Section 13 of the Act provides that the Collector may, on application being made to him at any time within one month after the publication of the list aforesaid by any person claiming to be qualified to vote at any election of members of the local board, correct any erroneous entry in the list or, subject to the provisions of sub-sections (2) to (6) insert therein the name of any person whose right to be entered in ~~the~~ the list is proved to the satisfaction of the Collector. Sub-sections (2) to (6) lay down the procedure for inviting objections to the insertion applied and for their decision and for making the entry. The list so revised has to be published finally within

...two moths of the date of the origina.
under section 12. Under Rule 4 of the Bombay Local Board Election Rules, 1932, at the time of the publication of a list of voters under section 12, the Collector shall also publish a notice in the manner prescribed for such publication, calling upon persons claiming to be voters to make applications to him within one month from the date of such notice for revision for revision of the list.

3. From these provisions it would appear that the voter who claims his name to be inserted is forewarned by a notice to make the application within one month of the date of publication. The statute, namely, section 13, also requires him to make the application within one month. Under section 3(30) of the Bombay General Clauses Act, 1904, "month" shall mean a month reckoned according to the British calender. Therefore, it denotes the period terminating with the day of the succeeding month numerically corresponding to the date of its beginning, less one. It is presumed that the application to the Collector in this case was made beyond the period of one month so interpreted.

4. If that be so, it would not be competent to the Collector to entertain the application. The general rule in this matter is that it is the duty of the officer who has to consider claims and objections to consider all claims of which he has received a valid notice and by "valid" is meant that the notice must be sent in time (Halsbury's Laws of England, 2nd Hailsham Edition, Vol. 12, p.212). In the leading case of Whitewell v. Clerk of the Peace for North Riding of Yorkshire (59,L.J.Q.B. 96) a voter who had, as in this case, an equally just claim to be put on the lis applied for that purpose beyond the prescribed date. The Revising Barrister entertained the application. I

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was held by the court of Queen's Bench that the Revising Barrister was wrong. Lord Coleridge, C.J.,observed :

> "It is not ~~on~~ a que-stion of justice or injustice but of jurisdiction. The claimant wished to be registered in respect of the same lodgings as those occupied by him the year before and in respect of which he had been put on the register for the previous year. Such a claim comes under the provision that it should be sent in by a particular date and it was not so sent in. The Revising Barrister, however, allowed the claim to be made in September which the Act of Parliament has said must be made in July; in so doing he exceeded his jurisdiction."

Mather J., who had said in the course of argument that the default was made by the voter who disregarded the express enactment of the statute, added that the omission was to send the claim by a fixed date ~~was~~ not a mere matter of form but of substance. In another case Daking v. Fraser (16 Q.B.D. 252) a similar view was taken on the ground that the words of the statute are clear and beyond doubt.

5. Following the law so established, it would, therefore, have to be held that the unfortunate result is due to the applicant's own default and disregard not only of the statutory provision but also of the notice which was given under Rule 4 for his benefit. The Collector, therefore, has no jurisdiction to entertained the application and he certainly has no jurisdiction to enter the name. ~~sug - move~~

Sd/- P.M.Lad,
18/3/49

Remembrancer of Legal Affairs.

U.R. to H. & L.S.D. NO.3042, dated the 18th March 1949.

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Office of the P.L.A.

Bombay Local Boards Act, 1923. Section 93(1).

Indian States (Application of Laws) Order, 1948 paras.7 and 11.

"Competent authority" to order the levy of cess as provided in section 93(1) of the Bombay Local Boards Act, 1923 is the Provincial Government. Consequently under paragraph 11 read with paragraph 7 of the Indian States (Application of Laws) Order, 1948 Government may make an order that in the merged areas to which the Bombay Local Boards Act, 1923 has been applied the same cess leviable would be as provided in Chapter VII of that Act even though it be less than that in any area before its merger.

Sd/- P.M.Lad,
8/3.
Remembrancer of Legal Affairs.

O.M. to R & L.C.D. No.2694, dated the 9th March 1949.

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Office of the R.L.A.

STATEMENT OF THE CASE.

It appears that by notification issued under section 28 of the Bombay Local Boards Act, 1923, the life of the District Local Board, Kolaba, has been extended upto 31st December 1949. Government considers that this period of extension should be curtailed and the question raised for R.L.A's consideration is whether Government, in exercise of powers conferred under section 128, sub-section (1), can order curtailing the period of extension.

2. In his Opinion No.1209, dated 7th June 1939, the R.L.A. held that an order extending the period of the Board under section 17 of the Bombay District Municipal Act, 1901, can be set aside or modified by Government in exercise of powers vested under section 180 read with sections 204 and 205 of the Bombay Land Revenue Code, 1879. Section 17(1) of the Bombay District Municipal Act, which empowers the Commissioner to extend the term of office, is analogous to section 28 of the Bombay Local Boards Act, 1923, which also gives power to the Commissioner to extend the term of office. Further, the provisions of section 180 of the former Act are similar to the provisions of section 132 of the latter Act. If that opinion of the R.L.A. is to be taken as laying down a correct law, there would be no legal objection to Government setting aside or modifying the order of the Commissioner in the present case in exercise of powers vested under section 132 of the Bombay Local Boards Act.

However, that opinion of the R.L.A. is not quite free from doubt.

3. Under section 17(1) of the Bombay District Municipal Act the Commissioner can order an extension of the term of office only if he thinks fit for reasons which shall be notified together with the order in the Official Gazette so to extend the same. Section 180 provides: "In all matters connected with this Act the Provincial Government, each Commissioner, and each Collector shall respectively have and exercise the same authority and control over the Commissioners,

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the Collectors and their subordinates as it or he has exercised over them in the general and revenue administration." The A.L.A. in his opinion No.1209, dated 7th June 1920, was of the opinion that section 180 gave Government the appellate powers. This view does not appear to be correct. If it was the intention of the Legislature to give Government appellate powers, it would have so specifically stated in section 180 which, as it stands, does not admit of any such interpretation. At the most, section 180 can be interpreted to mean conferring on Government revisional powers, but even that interpretation does not appear to be free from doubt. By comparing section 201 of the Bombay Land Revenue Code, which gives Government revisional powers, with section 180 of the Bombay District Municipal Act it is apparent that the latter provision did not contemplate giving such wide revisional powers. At any rate, the language of that section does not appear to admit of such interpretation. And jurisdiction by way of appeal or revision cannot be inferred but must be expressly given by statute (54 Bom. 664 at p.668). It would be relevant in this connection to compare the provisions of Chapter II of the Bombay Land Revenue Code, which provides for constitution and powers of revenue officers. Under section 4 in that Chapter the Chief Controlling Authority in all matters connected with the Land Revenue is vested in the Commissioner subject to the Provincial Government. The Collector or the Assistant Collector or Deputy Collector appointed under section 8 shall have all powers and discharge all the duties conferred or imposed by this Act or any other law for the time being in force and in all matters, not specially provided by law, shall act according to instructions of the Provincial Government. It is clear from these provisions that the Commissioner, the Collector, the Assistant Collector or Deputy Collector shall be under

the administrative control of Government in all matters connected with general and revenue administration. This kind of control appears to have been provided for by section 180 of the Bombay District Municipal Act. If this interpretation is correct then what Government can do in exercise of powers under section 180 of the Bombay District Municipal Act, is to make suggestions to the Commissioner, Collector and their subordinates in all matters connected with this Act, in so far as they relate to executive orders, as distinguished from judicial or quasi-judicial orders.

4. Similar was the view taken by the R.L.A. in Girase's case, dated 31st August 1938, which was followed by the R.L.A. in his opinion No.7689, dated 13th August 1948. The former opinion related to the interpretation of section 132 of the Bombay Local Boards Act and the latter to section 107 of the Bombay Village Panchayats Act, both of which sections are similar to section 180 of the Bombay District Municipal Act. In the former opinion the question considered was whether Government can direct the Collector to take action under section 125(1) of the Bombay Local Boards Act, 1923, and the R.L.A. opined that the words "in his opinion under section 125(1)" are important and suggest that it is the opinion of the Collector himself on which the order under this section must be based; and, if a person has to form an opinion and his opinion is to govern he must form it himself on such reasons and grounds as would seem to him, but, as the order to be passed under sub-section (1) is an administrative order, Government would be perfectly competent to give directions or instructions to the Collr. as to how and in what manner he should act. In the latter opinion No.7689, dated 13th August 1948, the question arose whether Government in exercise of powers vested under section 107 of the Bombay Village Panchayats Act can set aside the order made under section 21 with the previous sanction of the Collector and the R.L.A. opined that in exercise of that power the ~~Commissioner~~ Government is entitled

Commissioner, in suitable cases, can give instructions to the Collector and also may, if a proper case is made out, suggest to the Collector to review his decisions. Section 28 of the Bombay Local Boards Act also requires that the Commissioner can extend the term of office only if he thinks fit for reasons which shall be notified, etc. It is clear from this provision that discretion to extend the term of office vests in the Commissioner and it is for that officer to exercise the discretion as he thinks fit. It would not, therefore, be possible for Government to interfere with that discretion of the Commissioner by resorting to section 132 and setting aside or modifying the order of the Commissioner. Consequently, the only feasible course would be that, if Government considers that the period of extension ordered by the Commissioner is unreasonably long or inexpedient, in view of the circumstances which may not be present to the Commissioner's mind when he passed the order, it can suggest to him to pass an order modifying his previous order and curtailing the period of extension; and the Commissioner can pass such order under section 28 read with section 21 of the Bombay General Clauses Act, 1904.

5. It may be contended that by virtue of the order passed by the Commissioner extending the period under section 28 of the Bombay Local Boards Act, the councillors are given a right to continue as councillors upto the end of the next year and if that order is modified by resorting to section 21 of the Bombay General Clauses Act, it would affect the rights of the councillors. There does not appear to be much substance in this contention. It is true that there is a general presumption against the intention to disturb the established state of the law or to interfere with the vested rights of the subject (see Maxwell; page 150). That principle relates to the interpretation of Statutes and may not have application to the power to modify the orders under section 21 of the Bombay General Clauses Act, particularly when the order passed by the Commissioner in the present case is purely an executive order.

6. Since questions of this kind often arise and sections 107(ii) of the Bombay Village Panchayats Act, 180 of the Bombay District Municipal Act, 220 of the Bombay Municipal Boroughs Act and section 132 of the Bombay Local Boards Act are similarly worded, it appears desirable to have an authoritative ruling on this point. The Advocate General is, therefore, requested to record his opinion on this point.

This reference may kindly be treated as immediate.

Sd/- S P.M.Lad,
12/2/48

Remembrancer of Legal Affairs.

U.O. to the Advocate General, Bombay, No.687-Confl, dated the 18th December 1948.

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M.V.V.
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No.4 of 1949.

Advocate General's Chambers,
High Court,
Bombay, 22nd March 1949.

U.O.N. to the Advocate General of Bombay,

dated 18th December 1948, No.687(Confidential).

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o p i n i o n.

Under section 28 of the Bombay Local Boards Act, 1923, the tenure of office of the Members of a Local Board may be extended by an Order of the Commissioner "if the Commissioner so thinks fit". Clearly, therefore, a discretion is vested in the Commissioner to be exercised by him alone. There is no express provision in the Act for an appeal from the Commissioner's decision, nor is there any express provision vesting a power of revision in an authority higher than the Commissioner, including the Government. Section 132 of the Act provides that Government can exercise the same authority and control over the Commissioner as it is can exercise in the general and revenue administration. It is to be noted that if the intention was to give Government an overriding power to cancel or amend any order made by the Commissioner in his absolute discretion, the legislature did not provide for expressly and as pointed out in the statement of the case by the R.L.A., jurisdiction by way of appeal or revision cannot be inferred but must be expressly given. The words of section 132 cannot, I think, be construed as being equivalent to an express provision giving a right of appeal or a power of revision. The General Revenue Administration is dealt with, among other acts, in the Land Revenue Code, (see sections 4 and 8 of that Act) That act has provisions expressly relating to appeals and revisions. (see Chapter XIII, sections 203 to 212). Therefore the general provisions of sections 4 and 8 were not construed as by themselves giving a power of revision to Government. I emphasise again the fact that there is a discretion expressly granted to the Commissioner. It would be strange, if that discretion, without in specific and express provision, could be revised by another authority. The observations above will apply .....

4 Cs.
M.V.V./6.6

equally to section 17(I) of the Bombay Bhiwandi District Municipal Act, and section 180 of the same Act.

Government can under the general powers of control make a suggestion to the Commissioner to promulgate a new order curtailing the life of the local Board, and it is then open to him to make an order reducing the period given under the original notification. Section 21 of the Bombay General Clauses Act provides that where there is, under any Bombay Act, power to issue notifications, orders, etc., then that power includes a power to amend, vary or rescind any notification or order. Accordingly the Commissioner in the exercise of that power can amend his original order.

In my opinion, therefore, Government cannot directly, by virtue of the powers under section 132, rescind or modify the discretionary order of the Commissioner, but can suggest to him reasons and grounds for reducing the life of the Local Board in question, whereupon he may, in the exercise of his discretion issue a further order accordingly.

Sd/-

Advocate General.
22/3/49

The members of the Local Board have no ....vested right to be member for a particular period and cannot complain of exercise of a statutory power to control a period of tenure, which is inherent in accompanies the power to extend the period.

Sd/-

A-Cs.
M.V.V.
6/6.

Office of the R.L.A.

A copy of the statement of the Case together with the opinion of the Advocate General No.4 of 1949 is forwarded herewith.

Sd/- P.W.Lad,

Recombmancer of Legal Affairs.

U.O. to H. & L.G.D. No.196-Genfl. dated the 23rd March 1949.

4-Cs.

M.T.V.
6/6.

Office of the R.L.A.

Bombay Local Boards Act, 1923. (Bom.VI of 1923) Rule fr 1(i) of the Rules framed under section 133(g).

For the purpose of determining the powers of the president of a district local board under rule 1(i) of the Rules framed under section 133(g) of the Bombay Local Boards Act, 1923 the maximum pay of the post to which the incumbent is to be appointed has to be taken into account (see R.L.A's opinion dated 1-11-1939 a copy of which is attached) R.L.A's opinion No.2564, dated the 10th August 1927 has no application to the present case.

Sd/- P.M.Lad,
8/6.

Remembrancer of Legal Affairs.

U.R. to H. & L.G.D. No.6398 dated the 8th June 1949.

4-Cs.

M.V.V.
6/6/.

Office of the R.L.A.

The Bombay Local Boards Act, 1923, section 133(h).

The office of the Engineer, District Local Board, Dharwar, fell vacant, An advertisement for the first time was published in the newspapers on 27.7.1948 calling for applications for appointment to that post. However, before the expiry of two months prescribed by rule (18) of the Rules framed by Government under section 133(h) of the Bombay Local Boards Act, 1923, the D.L.B. appointed one Mr. Narke, one of the applicants, as Engineer of the District Local Board on probation for one year. The Commissioner, S.D., observes that the advertisement calling for applications for the post of Engineer was published for the first time in the newspapers on 27.7.1948 and the Board appointed Mr. Narke on 2.9.1947 i.e. 25 days before the lapse of two months and contrary to the provisions contained in rule 18 and recommends that the President's request to condone non-compliance with rule 18 in view of the urgency of the appointment to be made may be granted. The Health & Local Government Department proposes that the irregularity committed by the Board can be rectified by appointing Mr. Narke in a temporary capacity for a short period by modifying its resolution that Mr. Narke's period of probation should commence on a date after the expiry of the period of two months prescribed by rule 18, and that his services prior to that date should be treated as purely temporary. The R.L.A. is requested to advise.

3. It is not necessary to resort to the device proposed by the H. & L.G.Department Rule 18 of the Rules framed under clause (h) of section 133 of the Bombay Local Boards Act prescribed two conditions for making permanent appointment: (1) applications should be called for by advertisement and (2) at least two months must elapse from the date of first such advertisement. The first condition is no doubt essential inasmuch as

due publicity is required to secure suitable and well qualified candidates for appointment to the important posts of the D.L.B. The second condition does not appear to be so essential to the appointment. In considering whether any statutory provision laying down certain conditions for the performance of duties and exercise of powers is or is not essential, the purpose and scope of the statutory provisions must be regarded. See Maxwell p.321. The purpose of rule (18) in laying down the condition that no permanent appointment should be made until the expiry of two moths from the date of the first advertisement is to prevent the D.L.B. from rushing through the appointments. If, therefore, some reasonable time elapses after the post is advertised and before a permanent appointment is made, there would deem to be a substantial compliance with this provision. In the present case before Mr. Marke was appointed more than a month was allowed to elapse from the date of the advertisement of the post. In the circumstance this condition being merely directory it appears that the appointment of Mr.Marke, though made before the expiry of two months, cannot be considered invalid.

Sd/- P.N.Lad,
23/6.

Remembrancer of Legal Affairs.

U.R. to H. & L.G.D. No.7005, dated the 24th June 1949.

4-Cs.

M.V.V.
6/6.

Office of the R.L.A.

The Bombay Local Boards Act, 1923.

Section 121.

It appears that in 1943 the District Local Board, Bijapur, appointed one Mr. Antin as Assistant Engineer in the scale of pay Rs.125-15-230/ After about a year Mr. Antin represented to the District Local Board for increasing his pay and accordingly the Board passed a resolution sanctioning a scale of pay of Rs.250-10-350 to Mr. Antin with effect from 1.1.1945. On an objection being taken by the Examiner, Local Fund Accounts, to the increase in the scale granted to Mr. Antin, the Commissioner, Southern Division in exercise of his powers under section 121 of the Bombay Local Boards Act, 1923, issued an order directing the Board not to give effect to its resolution. The Examiner, Local Fund Accounts, under his letter dated 1.3.1947 informed the Board that it would have to recover from Mr. Antin the excess payment made from 1.1.1945 to 13.8.1946 i.e. the date on which the Commissioner issued his order. In the meantime the Board has preferred an appeal to Government under the proviso to section 121. On the recommendation made by the present Commissioner, Southern Division, it appears that Government is inclined to modify the Commissioner's order dated 13.8.1946 sanctioned a scale of Rs.220-10-350 with effect from 1.1.1947. The question raised for R.L.A's consideration is whether the Commissioner's order dated 13.8.1946 can be given retrospective effect so that the excess pay given to Mr. Antin can be recovered from him as opined by the Examiner, Local Fund Accounts, in his letter dated 1.3.1947.

2. Section 121 of the Bombay Local Boards Act, 1923, gives power to the Commissioner to require the Board to reduce the remuneration of its servants or officers. Obviously, therefore, an order passed by given the Commissioner under this provision cannot be given retrospective effect. The reduction in the remuneration as required by the Commissioner will have to be given.....

only prospective effect. Consequently, the view taken by the Examiner, Local Fund Accounts, in his letter dated 1.3.1947 that the Board shall have to recover from Mr. Antin the excess remuneration given to him from the date of its resolution to the date of the orde of the Commissioner would not be tenable. The order passed by the Commissioner dated 13.8.1946 however, will be effective from that date till it has been reversed or modified by Government. The order now proposed by Government would in effect be a modification of the order passed by the Commissioner on 13.8.1946. Consequently the remuneration drawn by Mr. Antin in excess of his scale Rs.125-15-230 from 13.8.1946(i.e.from the date of the Commissioner's order) till 1.1.1947 from which date the Government proposes to sanction a higher scale and that drawn in excess of the scale of Rs.220-25-400/- from 1.1.1947 till the date of the Government's order will have, however, to be refunded by Mr. Antin.

Sd/- P.N.Lad,
15/6.

Remembrancer of Legal Affairs.

U.R. to H. & L.G.D.No.6654, dated the 16th June 1949.

4-Cs.

N.V.V.
6/6.

Office of the R.L.A.

The facts in this case, which have to be gathered from two messages sent by the Collector of Ahmednagar over the telephone and the letter with its accompaniments which he subsequently sent, are involved in controversy and have not been fully stated.

2. The relevant facts appear to be as follows: The first meeting of the District Local Board, Ahmednagar, for the electing of a new President was called by the retiring President, Mrs. Hirabai Bhapkar on 10.7.1949. Mrs. Bhapkar presided at the meeting and invited the members to elect a Chairman for that meeting. It appears that two nominations including her own were received. She then decided that votes of the members for the election of the Chairman should be taken by ballot. The ballot papers were accordingly distributed to the members with the instructions for voting. The ballot papers were then deposited in a box. Mrs. Bhapkar then proceeded to count the ballot papers. Sardar Therat, one of the Councillors and the other nominee for the chairmanship, objected to such procedure and suggested that, as the retiring President was an interested party, the counting should be done in the presence of two tellers for each of the two rival parties. This suggestion was desicarded by Mrs. Bhapkar and she counted the votes herself. As she took out some ballot papers and endorsed them as 'invalid', Sardar Therat took objection. Then followed some discussion. It is even suggested that Sardar Therat may have created a row; and that some others created disturbances. Thereupon Mrs. Bhapkar adjourned the meeting sine die without taking the sense of the meeting and left the meeting with all the records, including the ballot papers. Fourteen members of the Shetkari Kamkari Party also left the meeting. It seems that Mrs. Bhapkar immediately furnished a copy of the proceedings to the Collector in which she said that she had to adjourn the meeting, as Sardar Therat created a disturbance in the meeting, under Regulation 10 framed under section 35 of the local Boards

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M.V.V. 16.6.

Act read with section 133(c). The Collector says that after she had so furnished him with a copy, the remaining 32 members requested the Chief Officer of the District Local Board to preside over the meeting and, on his refusal to do so, they proceeded to elect the Chairman and the new President. At that meeting Sardar Thorat was unanimously elected as the new President of the District Local Board, Ahmednagar. On these facts the R.L.A. is requested to advise -

(1) whether the action of the remaining 32 members in continuing the meeting after Mrs. Bhapkar had left was legal;

(2) whether the election of Sardar Thorat as President was legally valid and

(3) whether, in case the election of Sardar Thorat is legally valid, the Collector can compel Mrs. Bhapkar to hand over charge to Sardar Thorat.

3. Paragraph 2 of section 27 of the Bombay Local Boards Act, 1923, as amended by Bombay Act IV of 1930, reads as follows :

> "The president or vice-president of the retiring board and, in their absence, the chief officer, if any, shall preside at such meeting, and the new board shall then elect its own chairman for that meeting; provided that (a) if the president or vice - president so presiding is a member of the new board, he shall be entitled to vote only as such member, and (b) the chief officer, when so presiding, shall have no right to vote. In case of an equality of votes the result of the election of the chairman shall be decided by lot to be drawn in the presence of the person presiding in such manner as he may determine.The chairman so elected shall then preside at such meeting, and the meeting shall then proceed to elect the new president."

Prior to the amendment, the material part of the section stood as follows:

> "The president of the retiring board shall preside at such meeting and the new board shall then elect its own chairman for that meeting and then the meeting shall proceed to elect the new president."

This wording of the section before amendment, which was retained in the Bombay District Municipal Act, section 23(7A), was considered in the case of Trimbak v.Vishnu (36 Bom. L.R.1314) and it was there pointed out by

Broomfield J. that under the unamended section it was the intention of the Legislature that the retiring President only and no one else should have the right to preside. The amendment makes it clear that it the retiring President alone is not regarded as an integral part of the meeting and, what is more, he has no right of voting in his capacity as such President.The principle upon which Trimbak v. Vishnu was decided was gathered from the English cases of The King v.Buller (1807,8East 389) , The King v. Williams (1813,2/ 2 M.& S.141) and Machell v. Newinson (1724(Foot note at p/87 of 11 East 77)2Ld. Raym. 1355). That principle was that, where under the statute the retiring President is to be regarded as an integral part of the machinery for the election of the Chairman at the meeting, an election held without him is void, the reason being that where the presence of any party is required in election, he must be personally present at the time when the election is declared. That principle would not be applicable to paragraph 2 of section 27 of the Bombay Local Boards Act as now amended inasmuch as it contemplates that either the President or the Vice-President of the retiring Board can preside and in their absence even the Chief Officer can and it does not give them a right to vote in their own capacity as such office-bearers To that prëvision the following observations of Bayley J. in the case of The King v. Gaberian (1809, 11 East 77)would be more appropriate :

> " I think it is extremely probable that the intention of the Legislature in this statute was that in case of the mayer's absenting himself during the election, the next in place and order to him might preside and go on with it, and that the wrongful act of the mayer in going away pending the proceeding would not defeat an election afterwards made by the body."

In the case of Trimbak v. Vishnu, Broomfield J. was inclined to accept this proposition but for the fact that section 23(7A) of the Bombay District Municipal Act retained the old unamended prevision of section 27 of the Bombay Local Boards Act. It would, therefore, seem that in law there would be no objection to a meeting convened under

4 Cs. / M.V.V. 6/6

....section 27 of the Bombay Local Boards Act, 1923, carrying on its business of electing its Chairman even after the retiring President, who was present and presided in the beginning, left the meeting by adjourning it while the election of the Chairman was in progress, provided -

(1) the retiring President's action in adjourning the meeting was ~~xxxxx~~ wrongful;

(2) neither the Vice-President nor the Chief Officer was available to preside at the meeting after the retiring President left;

(3) the same meeting was continued without any interval; and

(4) the procedure involved no surprise and fraud upon the ~~xxx~~ members who had left along with the retiring President.

4. Whether the retiring President's action in adjourning the meeting was wrongful would depend upon the construction of the material regulations, a copy of which is not on record and in the absence of which it is difficult to pronounce any opinion. Thus, it is not quite clear whether the President's action in requiring voting by ballot for the election was itself lawful; for, it was held in the case of Samalbhai v. Jesangbhai (38 Bom.L.R. 1331) that section 35 (2) (k) of the Bombay Local Boards Act, 1923, confers upon the members of a local board the right to have the names of persons voting for or against a resolution disclosed, i.e., the Act as framed does not contemplate voting by ballot. Secondly, we are not told the nature of the disturbance or row created by Sardar Thorat and others; whether it was such as would entitle the President under the Regulations 9 or 10 on which reliance is placed to adjourn the meeting on the ground that its continuation was not possible in the disturbed conditions. These question can be answered only after the full facts are stated and a copy of the Regulations is supplied to the R.L. Regarding the second proviso, it is now stated on behalf of Sardar Thorat that the Chief Officer declined to accept the invitation to preside. It appears from the Collector's report that the meeting which proceeded to elect Sardar Thorat was held after the retiring President had made his

a report to the Collector which would presuppose a considerable interval between the adjournment of the meeting and its subsequent assembly. Mrs. Khapker's letter would also suggest that the City Magistrate and the Police may have been sent for in the interval. If that be so, it would be difficult to say that the same meeting was continued. In any case that point would require further consideration after the true facts are supplied. In respect of the fourth proviso, it must be observed that it has been laid down in the case of The King v. Gaberian cited already that, if the meeting was adjourned without any objection, and the retiring President was suffered to depart along with a number of members on the supposition that no further proceedings would be then had, the silence and acquiescence at the time of those who afterwards proceeded to make an election would operate as a surprise and fraud upon the other electors and, therefore, the election made by them under such circumstances cannot be supported.

5. The Health and Local Government Department is, therefore, requested to call for a detailed and complete report of the facts from both the contending parties with special reference to the provisos and, if any difficulty is experienced in applying to those facts the principles explained above, to refer the case to the R.L.A. again for advice.

6. Regarding question No.3.- There is no provision in the Bombay Local Boards Act empowering the Collector to compel the retiring President to hand over charge to Sardar Thorat. In fact there is no provision in the Act requiring the retiring President to hand over charge to the new President. It would, therefore, be open to Sardar Thorat to assume office and to function without taking over any formal charge of the office from the retiring President. However if he is obstructed in so assuming office, the only remedy for him would be to approach the Civil Court for relief. The Collector cannot compel the retiring President to hand over charge to Sardar Thorat.

Sd/- P.M.LAD,
23/7/49

Remembrancer of Legal Affairs.

4-es./M.V.V./6.6

U.R. to H. & L.G.D. No.8196, dated 20.7.1949.

Office of the R.L.A.

It now transpires that Mrs. Bhapkar has already filed a suit for a declaration that the meeting for the presidential election was legally adjourned by her and also for a declaration that the second meeting called by Sardar Thorat was illegal and that Sardar Thorat has no right to style himself as President (civil suit No.303 of 1949). From a letter addressed to the Second Additional Resident Magistrate it appears that she is taking the stand that the meeting was adjourned for refusal to obey her ruling as chairman and as the meeting got unruly on that account.

2. The report submitted by the Collector and the Commissioner's endorsement thereon is, however, to the effect that there was no rowdyism at the meeting which would have necessitated its adjournment and that Mrs. Bhapkar acted unlawfully in adjourning it and further that the meeting continued even after she and some members left and there was no element of surprise and fraud upon the electors who had so left.

3. As the matter is now sub judice, it is unnecessary to settle the two controversial issues of fact. It appears from the stand now taken by Mrs. Bhapkar that she is not depending very much upon the rules for justifying the adjournment as upon the inherent power of a chairman to adjourn a meeting when it is in such a state of disorder and excitement that the chairman cannot enforce order and the transaction of business becomes impracticable. It also appears to be her case that the meeting was not continued and the election was a surprise and fraud upon the persons who left the meeting with her.

4. Mrs. Bhapkar will naturally canvass these questions in the suit which she has commenced. Government apparently is not a party to the suit; the Collector's report does not say that Government has been impleaded as a party. If that be so, Government may decide to accept the version of facts..

4-CS.

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which its officers have reported upon enquiry. Upon that version, Sardar Thorat's election as President would appear to be quite legal. Until Mrs. Bhapkar gets an order from the court to the contrary, Government may, therefore, recognise Sardar Thorat as the validly elected President. It has already been pointed out in my former opinion that there is no provision in the Bombay Local Boards Act empowering the Collector to compel the retiring President to hand over charge to Sardar Thorat. Government can, however, support its recognition by issuing executive instructions to the authorities concerned to accept Sardar Thorat for the time being as the validly elected President.

Sd/- P.M.LAD,
5/8/49

Remembrancer of Legal Affairs.

U.R. to H. & L.G.D. No.501- Genfl. dated the 5th August 1949

4-Cs.

M.V.V.
6/8.

These courses seem open in the present case, of which two are suggested by Secretary, Health and Local Government Department. He suggested in the first place action under section 7 of the Bombay Local Boards Act, 1923. It is doubtful whether the addition of new territory from the States to the existing districts should be treated as an exceptional reason for which we should withdraw from the Board the application of the provisions of sections 5 and 6 which provide for elective principles, etc. Recourse to this section would necessitate the substitution of alternative provisions. It is a matter for consideration whether such extreme step need be taken to meet the contingency of the reconstitution of districts by the additions of new territories, especially when almost all the Boards in the Province excepting a few will be affected.

2. The second course is to dissolve and reconstitute the Boards under section 131B A of the Act. Recourse to this section would depend upon whether Government think it possible to prepare and publish the list of voters including those in the integrated States before the expiry of the period of one year which is the maximum period for which the members of the reconstituted local Board can hold office. Section 15 of the Act referred to by Secy., H. & L.S.D., prescribes the qualifications which a person must possess in order to be entitled to have his name entered in the list for a constituency prescribed under section 6. One of these qualifications is that the person must have a place of residence within the constituency on the first date of January next preceding the date on which the list is published under section 12. It is not necessary under this section that the date of residence should be counted .....

4-Cs.
M.V.V.
6/6.

.....from ~~xx~~ the date on which the constituency ~~within~~ which he resides is formed. If a person has a place of residence on the first day of January next preceding the date on which the list is published within the constituency even ~~however~~ before it is formed he will be entitled to have his/name entered in the list for the constituency. The difficulty envisaged by Secy., H.& L.G.D. in view of the provisions of sec. 15 will not arise. It must be pointed out that action under section 131-A to a certain extent interferes with ~~xxxxx~~ the elective principle.

3. There is a third and perhaps a better course, namely, to extend before the 31st March 1949 the term of the Board under section 28 by a period of two years and to move the Governor General to include in his order under section 290-A of the Government of India Act, 1935, provisions for nomination of the members from the integrated States on the local boards. This will leave sufficient time for preparation of voters' list and for holding of elections before the expiry of the extended term of the Boards. At the same time it will involve the least interference with the elective principle, for nominations will be made only for the new territory added to the district.

Sd/- P.N.LAD,
17/3.

Remembrancer of Legal Affairs.

U.R. to H. & L.G.D. No.3046 dated the 18th March 1949.

4-Cs.

M.V.V.
6/6.

Legal Department.

Section 4 of the Bombay Local Boards Act, 1923, provides that the Provincial Government shall establish one district local board for each district. The provisions of this section are mandatory and it would be necessary for the Government to establish for each district a district local board. It is true that as pointed out in H.L.A's opinion No.7276, dated the 9th September 1942, there can be no remedy against the Government by way of mandamus if the Government fails to carry out its statutory duty the performance of which is intended to benefit the general public. But it may be possible for a subject to bring a declaratory suit against Government and raise the question regarding the failure of the performance of the duty in various ways. The subject may object to the levy of the local fund cess in the area for which no local board has been established. In several cases their Lordships of the Privy Council have entertained declaratory suits and granted declarations which strictly speaking did not fall within the purview of section 42 of the Specific Relief Act. If the Court grants a declaration in any suit brought by an inhabitant of the Dangs District, the position of Government would be most embarrassing. In the circumstances as already suggested an amendment of the Bombay Local Boards Act would be necessary to enable Government not to establish a local board for any particular district.

Sd/- J.R.Dhurandhar,
23/8.

Additional Secretary to Government.

U.R. to H. & L.C.D. No. 532-Genl. , dated the 23rd August

4-Cs.

M.V.V.
6/8.

Office of the R.L.A.

Confidential.

Whatever be the nature of their composition the Boards were continued and deemed to have been constituted under the Act as now applied to the State territory. Therefore, the fact that they are composed of nominated members cannot, therefore, be now urged as a ground of conflict with the District Local Board Act, 1923.

2. Section 131-A would come into play only if the limits of the District are altered during the term of office of the members of the District Local Board. At the last ~~and~~ discussion the R.L.A. was given to understand that in the case of the Boards at Baroda, Mahsana and Amreli, the limits were either not altered, or if they were altered, the alteration was by way of removing certain territory so that it was not necessary to reconstitute the Board. However, it would be legally feasible to take action under section 131-A provided there is alteration either by way of addition of new territory or transfer of territory to some other District. Whether there has been such alteration is a question of fact to be decided by the Department.

Sd/- P.M.LAD,
24/9.

Remembrancer of Legal Affairs.

U.R. to H. & L. G. D. NO.619-Confl., dated the 26th Sept. 1949.

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P:V.V.
6/6.

L.D.R.I.12811/dt..... .. 1949.

It appears that under section 99 of the Bom. Local Boards Act, 1923, read with item No.46 of List II in the Seventh Schedule to the Government of India Act, the District Local Board, Thana, has decided to levy the profession and industrial tax within its limits. Under clauses (VI(a) and VI (b) of sub-section (2) of section 89 of the Bom. Village Panchayats Act, the Gram Panchayat, Nargol, has also decided to levy a tax on shops and hotels and on premises where machinery is run by steam, oil or electric power for any purpose other than domestic or agricultural purpose. The Sarpanch, Gram Panchayat, Nargol, States that if both the D.L.B. and the Gram Panchayat try to levy the same kind of tax, it would creat misunderstnading and would lead to friction.

p. 1 ante.

In his letter dated 5/3/1949, the President, D.L.B. , Thana, informed the Sarpanch, V.P.Nargol, that if any village panchayat wished to levy any of such taxes, the Board would withdraw itself from such area thus allowing the village panchayat to levy and collect the tax itself; or in the alternative, if it is permissible under the Act and the rules, the Board would credit the net proceeds (after deducting collection charges) to the Village Panchayat concerned. To avoid double taxation in the areas within the limits of the Village Panchayats the Board agreed to allot to the panchayats an amount equal to the realisations from any of these taxes. In para 4 of his endorsement No. V.P.29-IV dated the 22nd July 1949, the Commr. N.D. observes:-

pp.13-15 ante.

p.17 ante.

p.11 do.

"In order to avoid double taxation by the District Local Board and the Village Panchayats, the President, D.L.B., Thana, has agreed to allo to the V.Ps an amount equal to the realisation from any of the taxes, if the panchayats decide to levy

these taxes in their areas and as such there is now no question of a dispute between the V.P. Nargol and the D.L.B. , Thana. Such disputes are, however, likely to arise elsewhere and the D.L.B. might not agree to allot a share of the income derived from the V.P. areas. In order to meet such contingencies, it is necessary to make a specific provision in the Local Boards Act that the District Local Board should not levy taxes of the nature described in clauses (VI a) and(VI b) of section 89(2) of the Village Panchayats Act in the areas where Village Panchayats levy these taxes, the Local Boards Act may be suitably assended."

The H.& L.G.Deptt., however, considers that in case of a dispute of the type referred to by the Commr. a general order can be issued by Govt. under section 99 of the Bom. Local Boards Act, directing D.L.Bs. to assign to Village Panchayats the realisations of the tax after deducting the cost of collection. pp.17-20 ante.

R.L.A. is requested to advise whether action as proposed by the H. & L.G.Deptt. would solve the difficulty or whether as recommended by the Commr. N.D. amendment of the Bom. Local Boards Act is necessary.

4-Cs.
M.V.V.
6/6.

Office of the R.L.A.

Seen and returned.

The view taken by the Health and Local Government Department at "A" on page 20 ante, is incorrect.

Sd/- P.M.Lad,
10.9

Remembrancer of Legal Affairs.

U.R. to H. & L.G.D. No.10263, dated the 12th September 1949.

A.-C.s.
M.V.V.
6/6.

Legal Department.

The question for consideration is whether the District Local Board, Baroda, can legally transfer funds to the District Local Board, Kaira, in respect of two talukas of Khadran and Patlad which have been transferred from the Baroda District to the Kaira District with effect from 1st August 1949. Section 131-B of the Bombay Local Boards Act, 1923, provides that where a local board has been dissolved and reconstituted or established under section 131- A, so much of the local fund and other property vesting in the local board which has been dissolved shall vest in, and such portion of the debts and obligations shall be transferred to a local board reconstituted or established under section 131-A as the Commissioner may by order in writing direct. Under this section, as applied to the Baroda State by the Bombay Baroda State(Application of laws) Order, 1949, it will be possible for the Commissioner to pass an order for vesting of a particular portion of the local fund in the local board reconstituted under section 131-A. After the District Local Board, Baroda, is dissolved and reconstituted under section 131-A, the Commissioner should pass an order for vesting in the reconstituted local board, local fund vesting in the local board dissolved, minus the local fund which it is intended should be transferred to the District Local Board, Kaira. The balance of the local fund thus remaining will naturally vest in the Crown and it would be competent to the Commissioner, with the sanction of the Provincial Government, to transfer that balance to the District Local Board, Kaira.

Sd/- J.R.Dhurandhar,
10/11.
Additional Secretary to Government.

U.R. to H. & L.G.D.No.12719, dated the 11th November 1949.

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Office of the R.L.A.

Bombay Local Board Act, 1923 Sec. 119(1)

Bombay Village Panchayats Act, 1933. Sec.95(2)

Appointment of overseer by D.L.B.to supervise works by panchayats.

Although there would be no legal objection to the District Local Board granting assistance of its overseer for tendering advice to the village panchayats within its area, it would not be competent for the District Local Board to ask the Panchayats to contribute towards the pay and allowances of its overseer unless the Bombay District Local Boards Act and the Bombay Village Panchayats Act are suitably amended.

Sd/- P.M.LAD,
20/9

Remembrancer of Legal Affairs.

U.R. to R. & L.G.D. No.10672, dated the 21st September, 1940.

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M.V.V.
6/6.

L.D.R.F.No.1476S/49

Legal Department.

Bhor and Janjira are the States specified in Sch.I to the Indian States (Application of Laws) Orde , 1948, In pursuance of paragraphs 3,4 and 5 of the Indian States(Application of Laws) Order, 1948, the Bom. Land Revenue Code, 1879, and the Bom.Local Boards Act, 1923, shall be deemed to have come into force in the Indian States of Bhor and Janjira with effect from 15.9.48. In exercise of power conferred by sect.7 of the Bom. Land Revenue Code, 1879, Govt. inter alia directed that the Sudhagad Taluka of the Bhor State and the whole of the areas of the Janjira State shall be part of the district of Kolaba. (vide P.& S.D. Notifin. 2325/46-F(1) dt.30.7.48). moreover, in pursuance of Art 3 of the States Merger (Governor's Provinces) Order, 1949, with effect from 1.8.49, the Bhor and Janjira States shall be administered in all respects as if they formed part of the Province of Bombay. From the above details, it will be clear that the local areas comprising the Sudhagad Taluka of Bhor State and the whole of Janjira State now form part and of the Distt. of Kolaba constituted under the Bom Land Revenue Code. The Distt. so constituted would be deemed to be a district under sect. 3A(1) of the Bom.Local Boards Act, 1923.

Sub-sect.(1) of sect.131A of the Bom Local Boards Act, 1923, provides that when an account of the constitution of a new district under the Bom. L.R.Code or under sub-sect.(2) of sect 3A or for any other reason, the limits of district or taluka are, during the the term of office of the members of the district or taluka board, altered, the Prov.Govt. may, by order published in the Official

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Gazette, dissolve such local board from the date specified in the order and direct a local board -

(i) to be reconstituted for the district or taluka of which the local board has been dissolved, or

(ii) to be established for a new district or taluka which has been constituted.

The members of the local board which has been dissolved shall vacate their offices from the date specified in the Order. Sub-sect. (2) provide that the district or taluka local board reconstituted or established under sub-sect (1) shall consist of members nominated by the Prov. Govt. Such members shall, so far as may be practicable in the opinion of the Prov. Govt. be persons who were members of the local boards, which have been dissolved under sub-sect.(1)

It is stated that as the normal term of office of the D.L.B. Kolaba, was due to expire on 31.5.48, under sect. 28 of the Bom. L.B.Act, the Commr. S.D. extended its term upto 31.12.49 As in the meanwhile, with effect from 1.8.49 the limits of the D.L.B., Kolaba, have been altered, the provisions of sub-sect.(1) of sect. 131A would be attracted and Govt. may dissolve the existing board and direct a local board to be reconstituted for the district local board so dissolved.

If Govt. allows the present Board to continue in office till the expiry of its term of office, without taking action for dissolving it, the result will be that a new will have to be constituted; but Govt. will have no power to dissolve the newly constituted board.Except under sect. Under sect.131A (1), Govt. is empowered to dissolve only that board which was actually in office and during whose term of office, the limits of the local board, were altered and not a board constituted thereafter.

The view taken by the Secy. H. & L.G.D. in his note dt. 6 A 6.9.49 is correct.

Sd/- 10/9.

It is also in accordance with the several policy which was decided upon in relation to districts whose limits were altered as a result of merger.

Sd/- / 10.9
A.L.R.

I agree . Reply may be as at A
Sd/- R.T.K./ 10.9 R.L.A

U.R. to H. & L.G.D. No.10517 dated 17th Sept.1949.

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Even though the Bombay Local Boards Act, 1923, has been applied to the Baroda State and the corresponding Baroda Act has been repealed by the Baroda State(Application of Laws) Order, 1949, and even though section 93(1) of the Bombay Local Boards Act, 1923 makes it obligatory upon the Provincial Government to levy cess at the rate of three annas in every rupee on every sum payable as ordinary land revenue, paragraph 11 of the said Order provides that any cesses etc., which immediately before the coming into force of this Order were being levied under any enactment in force in the Baroda State and repealed by paragraph 5 shall continue to be levied under the enactment extended under paragraph 3 until provision to the contrary is made by a competent authority. The said Order has been kept alive under the States Merger (Governor's Provinces) Order, 1949. The Collector of Baroda State in his letter at page 23 ante states that the Local Fund cess was levied at the rate of two annas per rupee over land revenue demand in the Baroda District of the Baroda State and that in some area of the said district the cess was levied at a lower rate i.e. at the rate of one anna per rupee. It would, therefore, appear clear that in the Baroda State even after its merger the local fund cess would have to be levied at 2 annas per rupee (or even less than that in some areas specified by the Collector of Baroda in his ~~xxxxxx~~ letter at p.23) (Vide R.L.A's opinion No.10297 dt.3rd Nov. 1948 copy attached). It is presumed that there is no immediate proposal to abolish the levy of local fund cess in any area. It does not therefore appear necessary to amend the Act as contemplated by H. & L.C.D.

2. As regards the proposal to give a grant in aid to a district local board in view of the low rate of local fund cess, Government can always give such grant by means an executive order.

Sd/- P.H.LAD,
15/12.

Remembrancer of Legal Affairs.

U.R. to R.D. No.14623, dated the 16th December 1949.

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Health and Local Govt. Deptt.

Government by their order ..No. 6008/33 dated the 18th November 1949 under Sec. 131-A of the Bombay Local Boards Act, 1923, dissolved the District Local Board, Baroda, and reconstituted a nominated Board consisting of 42 members with effect from 5th December 1949. It is proposed to appoint two more members in the reconstituted Board. The H.L.A. is requested to advise if it is legally possible at this stage to make nomination to the Board of any more persons. As the dissolution and the coming into existing is to take effect from 5th December 1949 it may be considered whether the legal position in regard to the adding of more names would be the same before 5th December and after 5th December. In view of sec. 21 of the General Clauses Act, 1904 it seems that addition to the list of persons can be made at any time.

Id. S.D.M.
29-11.

Mr. Lad, H.L.A.

I agree with the Secy., H.& L.G.D. that at this stage Government can nominate more persons. The further question is hypothetical and may be reserved for consideration when it arises in the light of the surrounding facts.

Id/- P.M.L.
29/11/

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Office of the R.L.A.

Bombay Local Board Act, 1923. Sections 131-A and 131-B.

It appears that by a notification issued under section 7 of the Bombay Land Revenue Code, the talukas of Bhadran and Petlad were excluded from the Baroda District and included in the Kaira District. However, the District Local Board., Kaira, has not continued the works which were already in progress nor has it paid the staff employed in the said two talukas of Bhadran and Petlad. In this connection the following questions are raised for the R.L.A's consideration :

(1) Whether the reconstitution of the District Local Boards, Kaira and/or Baroda under section 131-A of the Bombay District Local Boards Act, 1923, is essential before the jurisdiction of the District Local Board, Kaira, is extended to the Petlad and Bhadran talukas of Baroda District, which have now been transferred to the Kaira District?

(2) Whether the Commissioner can issue and order under section 131B of the Act vesting the property of the District Local Board, Baroda, in the Bhadran and Petlad talukas in the District Local Board, Kaira, before the reconstitution of the District Local Board, Kaira and/or Baroda?

(3) Whether along with the transfer of the works in the Bhadran and Petlad talukas under section 131B the Commissioner can also direct the transfer of the funds earmarked for these works?

By virtue of the notification issued under sectio 7 of the Bombay Land Revenue Code, 1879, the jurisdiction of the District Local Board, Kaira, would certainly exten to the talukas of Bhadran and Petlad, which have been included in the limits of the Kaira District (see section 3 of the Bombay Local Boards Act, 1923). Consequently,

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..... the reconstitution of the District Local Boards, Kaira and/or Baroda under section 131A would not be necessary for the purpose of giving jurisdiction ot the respective Local Boards over the area which has been included within the limits of the District.

Section 131A of the Bombay Local Boards Act provides for power of Government to dissolve and reconstitute local boards on the alteration of limits of districts or Talukas. Under section 131B power is given to the Commissioner to order the vesting of the properties, etc, of the local boards which have been dissolved, in reconstituted boards. It is, therefore, clear that section 131B would not come into play unless section 131A has been already resorted to and the Boards have been dissolved and reconstituted. The reply to the second question would obviously be in the negative.

If the District Local Boards of Baroda and Kaira are dissolved and reconstituted, it would be competent for the Commissioner to direct under section 131B not only the transfer of the works in the Bhadran and Petelad talukas to the Kaira District but also to direct the transf of the funds earmarked for these works to the Kaira District.

In the linked case the question raised for the R.L.A' consideration is whether the Commissioner can issue an order under section 131B before action is taken by the Provincial Government under section 131A of the Bombay Local Boards Act, 1923. This point is already considered above. As pointed out therein, no direction can be issued by the Commissioner under section 131B before Government orders the dissolution and reconstitution of the Board under section 131A.

Sd/- P.N.LAD,
18/11.11.
Remembrancer of Legal Affairs.

U.R. to H. & L.G.D. No.13160, dated the 18th November 1949.

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Office of the R.L.A.

Bombay District Local Boards Act,1923.

Section 119(1) and Bombay Village Panchayats Act, 1933.
Section 95(1)

R.L.A's opinion No.10672 dated 21.9.1949.

The question for the R.L.A's consideration is whether in view of section 119(1) of the Bombay District Local Boards Act, 1923, it would be competent for a district local board to appoint a separate independent overseer under section 95(1) of the Bombay Village Panchayats Act for the exculisive work of advising the village Panchayats.

It is no doubt true that under sect. 119(1) of the Bombay Legal Boards Act, 1923, every district local board had to prepare and sanction a Schedule of the staff appointed and maintained for the effecient execution of its duties and the duties of the taluka local boards in the district under this Act. As this provisions does not contemplate appointment and maintenance of staff for execution of the duties of the village pabchayats in the district, it does not appear that under section 119(1) a separate independent overseer solely for assisting panchayats can be appointed. However, in the ~~purpose~~ proper exercise of their powers and performance of their duties under section 95(1) of the Bombay Village Panchayats Act, such appointment can be made; for the words "or any other officer specially appointed by the district local board in this behalf" in section 95(1) of the Bombay Village Panchayats Act, contemplate appointment of a separate officer by the local board for the purpose specified therein. When the District Local Board is empowered to appoint an officer specially for the purposes of section 95(1) of the Village Panchayats Act, impliedly it should be deemed to have a right to defray expenditure out of its local Fund. Even though a village panchayat may be constituted for a local area, in pursuance of section 4(3) of the Bombay Local Boards Act, such area would still remain subject to the jurisdiction and authority of the District Local Board, with the result that both the Village Panchayat and the District Local Board, will have

concurrent jurisdiction over that area and has power of supervision over the Panchayat (Sec.36(1) of the Act). Consequently, reading the provisions of section 119(1) of the Bombay Local Boards Act, with section 95(1) of the Bombay Village Panchayats Act, it appears open to a District Local Board to appoint a separate Overseer exclusively for the purposes of section 95(1) of the Bombay Village Panchayat Act and to incur expenditure out of its own fund.

Sd/- P.M.LAD,
23/11.

...mbrancer of Legal Affairs.

U.R. to H. & L.G.D. No.13428, dated the 24th November 1945

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